

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201807553	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/03/2018 9:30 AM	Location of Incident: Inside § 87(2)(b)	Precinct: 34	18 Mo. SOL 2/3/2020	EO SOL 2/3/2020	
Date/Time CV Reported Thu, 08/30/2018 9:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/13/2018 2:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			034 PCT
2. POM Carlos Pages	15802	957929	034 PCT
3. POM James Garrity	5225	954852	034 PCT
4. POM Nicholas Agolia	09155	957316	034 PCT
5. POM Richard Willows	06839	957289	034 PCT
6. SGT Majer Saleh	02402	929110	034 PCT
7. Officers			034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Victor Yupa	23804	955685	034 PCT
2. POM Cristian Duran	27567	938412	034 PCT
3. POF Nelly Vega	12512	953523	034 PCT
4. POM Malcolm Liu	08825	932906	034 PCT
5. POM Shelby Hernandez	11860	956733	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Majer Saleh	Abuse: Sergeant Majer Saleh questioned § 87(2)(b)	
B.POM Nicholas Agolia	Abuse: Police Officer Nicholas Agolia entered § 87(2)(b) in Manhattan.	
C.POM Carlos Pages	Abuse: Police Officer Carlos Pages entered § 87(2)(b) in Manhattan.	
D. Officers	Force: Officers used physical force against § 87(2)(b)	
E. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	
F.SGT Majer Saleh	Abuse: Sergeant Majer Saleh frisked § 87(2)(b)	
G.POM James Garrity	Abuse: Police Officer James Garrity frisked § 87(2)(b)	
H.POM James Garrity	Abuse: Police Officer James Garrity searched § 87(2)(b)	
I.POM Richard Willows	Abuse: Police Officer Richard Willows frisked § 87(2)(b)	
J.SGT Majer Saleh	Abuse: Sergeant Majer Saleh forcibly removed § 87(2)(b) to the hospital.	

Case Summary

On August 30, 2018, § 87(2)(b) called the IAB Command Center and filed this complaint. Log #2018-34747 was generated and it was received at the CCRB on September 13, 2018.

On August 3, 2018, at approximately 9:30am, PO Carlos Pages, PO James Garrity, PO Nicholas Agolia, PO Richard Willows, and Sgt. Majer Saleh, all of the 34th Precinct, arrived at § 87(2)(b) in Manhattan. After the officers knocked, § 87(2)(b) opened the door and Sgt. Saleh guided § 87(2)(b) out of the apartment. Sgt. Saleh then asked him if he had a knife (**Allegation A-Abuse of Authority: § 87(2)(g)**). § 87(2)(b) asked to retrieve his shoes from inside his apartment and PO Agolia and PO Pages entered the apartment to retrieve the shoes (**Allegations B and C-Abuse of Authority: § 87(2)(g)**). Once outside, officers allegedly pushed down on § 87(2)(b)'s shoulders causing pain (**Allegation D-Force: § 87(2)(g)**). § 87(2)(b) asked to go back inside his apartment and an unidentified officer allegedly told him “you can’t go into your house or we’ll arrest you” (**Allegation E-Abuse of Authority: § 87(2)(g)**). Once outside, Sgt. Saleh frisked § 87(2)(b) (**Allegation F-Abuse of Authority: § 87(2)(g)**). PO Garrity frisked and searched § 87(2)(b)'s right pants pocket (**Allegations G and H-Abuse of Authority: § 87(2)(g)**). At the same time, PO Willows frisked § 87(2)(b)'s left pants pocket (**Allegation I-Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was then removed to the hospital (**Allegation J-Abuse of Authority: § 87(2)(g)**).

Video footage was provided from the following officers’ Body Worn Cameras (BWC): PO Victor Yupa (Board Review 01), PO Agolia (Board Review 02), PO Garrity (Board Review 03), PO Pages (Board Review 04), and PO Willows (Board Review 05).

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Majer Saleh questioned § 87(2)(b)

In BWC footage, Sgt. Saleh can be heard asking § 87(2)(b) if he has a knife. § 87(2)(b) did not raise this allegation.



Question.mp4

At 00:02 in the above clip from PO Pages’ BWC footage, Sgt. Saleh can be heard asking § 87(2)(b) if he has a knife (Board Review 06).

Event #§ 87(2)(b) indicates that § 87(2)(b)'s social worker called 911 and states that § 87(2)(b) threatened them with a knife (Board Review 19).

Sgt. Saleh testified that he responded to § 87(2)(b) in Manhattan in regards to a radio run for an Emotionally Disturbed Person (EDP) with a knife. When he arrived on scene, he spoke to one of § 87(2)(b)'s social workers who informed him that they had tried to enter § 87(2)(b)'s apartment to clean it and § 87(2)(b) approached them with a knife. The social worker also informed Sgt. Saleh that § 87(2)(b) had a history of mental illness. The officers knocked on the door and when § 87(2)(b) answered it, Sgt. Saleh guided him out of the apartment. Sgt. Saleh

then asked § 87(2)(b) if he had a knife on him. Sgt. Saleh testified that he asked this question because the radio run had included § 87(2)(b) having a knife and the social worker had also reported this to Sgt. Saleh (Board Review 07).

When a person might reasonably believe from the content of an officer's question that he is suspected of some wrongdoing, the encounter must be supported by founded suspicion that criminality is afoot. New York v. Hollman, 79 N.Y.2d 181 (Board Review 08).

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Allegation (B) Abuse of Authority: Police Officer Nicholas Agoglia entered § 87(2)(b) in Manhattan.

Allegation (C) Abuse of Authority: Police Officer Carlos Pages entered § 87(2)(b) in Manhattan.

In the BWC footage, PO Agoglia and PO Pages can be seen entering the immediate entry way of § 87(2)(b)'s apartment then leaving. § 87(2)(b) did not raise these allegations



Entry.mp4

At 00:02 in the above clip from PO Agoglia's BWC, § 87(2)(b) asks for his shoes after he is guided out of his apartment. PO Agoglia and PO Pages enter the apartment. The officers remain near the front door. PO Agoglia retrieves § 87(2)(b)'s shoes and the officers exit (Board Review 09).

Officers may lawfully enter a location having obtained voluntary consent from a party who possesses the requisite degree of authority. People v. Cosme, 48 N.Y.2d 286 (1976) (Board Review 10).

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Allegation (D) Force: An officer used physical force against § 87(2)(b)

Allegation (E) Abuse of Authority: An officer threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that unidentified officers used physical force against him. An unidentified officer then threatened to arrest him.

This allegation is being pled against an officer and officers because § 87(2)(b) was unable to identify which officer allegedly used force against him and threatened to arrest him.

§ 87(2)(b) testified that once he was brought into the hallway, multiple officers began pushing down on his shoulders. This caused pain to § 87(2)(b)'s back. While outside his apartment, § 87(2)(b) asked to go back inside his apartment. An officer stated, "you can't go into your house or we'll arrest you." (Board Review 11)



201807553_20181003_1149_DM.mp4

The video clip above captures the entirety of § 87(2)(b)'s interaction with the officers outside of his apartment. At no point do officer push downwards on § 87(2)(b)'s shoulders. Nor does any officer threaten to arrest § 87(2)(b) (Board Review 04).

Both officers interviewed for this case denied any officer using force or threatening to arrest § 87(2)(b) (Board Review 07 and 12).

§ 87(2)(g)

Allegation (F) Abuse of Authority: Sergeant Majer Saleh frisked § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer James Garrity frisked § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer James Garrity searched § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Richard Willows frisked § 87(2)(b)

Sgt. Saleh testified that he frisked § 87(2)(b) once he was outside the apartment. In BWC footage, PO Garrity can be seen frisking and searching § 87(2)(b) PO Willows can be seen frisking § 87(2)(b) § 87(2)(b) did not raise any of these allegations.



Garrity frisk search.mp4

At 00:03 in the clip above, PO Garrity can be seen grabbing the outside of § 87(2)(b)'s right pants pocket before reaching inside. He pulls out a set of keys. While he is doing so, an officer tells § 87(2)(b) that they are just making sure he doesn't have a knife on him (Board Review 13).



Willows frisk.mp4

At 00:01 in the clip above, PO Willows can be seen grabbing the outside of § 87(2)(b)'s left pant pocket and down his pant leg (Board Review 14).

Sgt. Saleh testified that once § 87(2)(b) was outside of the apartment, he patted the outside of § 87(2)(b)'s waist area. He did not pat anywhere else. He did so to see if § 87(2)(b) had a knife on his person. He suspected that he might because of the information provided over the radio and the statement of the social worker on scene (Board Review 07).

PO Garrity testified that he did not have any specific recollection of this incident. After viewing the video footage, he testified that he believed he frisked § 87(2)(b) based on the information that

§ 87(2)(b) had threatened someone with a knife. He further believed that he reached inside § 87(2)(b)'s pocket because he felt something hard, possibly the keys that he ultimately pulled out (Board Review 12).

PO Willows resigned from the NYPD and thus was not interviewed in regards to this case (Board Review 20).

A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. A search after a frisk is to be conducted when the officer feels an object during the frisk that the officer reasonably suspects is a weapon. NYPD Patrol Guide, Procedure 212-11. An officer may frisk a person that he reasonably suspects to possess a weapon. People v. De Bour, 40 N.Y.2d 210 (Board Review 15, 21).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (J) Abuse of Authority: Sergeant Majer Saleh forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) was removed to the hospital.

§ 87(2)(b) testified that an officer informed him that he was going to be taken to the hospital. He told the officers that he did not want to go. § 87(2)(b) was then led to an ambulance and taken to the psychiatric ward at § 87(2)(b) (Board Review 11).

Sgt. Saleh testified that they brought § 87(2)(b) downstairs to speak to EMTs that were on scene. The EMTs briefly spoke to § 87(2)(b) then spoke with Sgt. Saleh. The EMTs informed Sgt. Saleh that § 87(2)(b) was off his medication and had to be taken to the hospital to get checked out. Sgt. Saleh testified that it was the EMTs decision to remove § 87(2)(b) to the hospital (Board Review 07).

When officers reasonably believed that a person must be taken into protective custody because they are a threat to themselves or others and that person is unarmed and nonviolent, the Emotionally Disturbed Person may be taken into custody. NYPD Patrol Guide, 221-13. Officers shall cooperate with ambulance/hospital personnel in every reasonable manner. NYPD Patrol Guide, 216-01 (Board Review 16, 22).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three CCRB complaints and has been named as a victim in 11 allegations (Board Review 17):
 - § 87(2)(b)
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- Sgt. Saleh has been a member-of-service for 17 years and has been a subject in nine CCRB complaints and 23 allegations, none of which were substantiated. § 87(2)(g)
- PO Agoglia has been a member-of-service for three years and has been a subject in three CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Pages has been a member-of-service for three years and has been a subject in one CCRB complaint and two allegations, neither of which were substantiated. § 87(2)(g)
- PO Garrity has been a member-of-service for five years and has been a subject in one CCRB complaint § 87(2)(g), which, as of the date of this report, is still open.

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Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 14, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 23)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Da